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## STATE CAPITOL REPORT

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### **TCEQ Commissioners Approve Radioactive Waste License for WCS Sierra Club, Others Outraged at Denial of Contested Case Hearing Request**

The Lone Star Chapter of the Sierra Club and others expressed outrage at last week's two-to-one vote by Texas Commission on Environmental Quality (TCEQ) Commissioners to deny citizens the right to protest a license to dump radioactive waste in West Texas.

TCEQ Commission Chairman Buddy Garcia and Commissioner Brian Shaw voted to issue a license to Waste Control Specialists (WCS) to permanently dispose of tons of radioactive "byproduct materials" in their facility in Andrews County just across the border from New Mexico. The license is the first of two that WCS is seeking as the company aims to create the largest commercial radioactive disposal site in the United States.

The byproducts license grants WCS the ability to bury more than 31 million cubic feet of byproduct materials, including the "hot" Belgian Congo uranium waste imported from Fernald Ohio in 2005 that is left-over from the Manhattan project, and potentially similar waste currently stored in New York State. Other

wastes that could be buried at the site, which borders New Mexico, include uranium ore milling and processing waste.

#### **Problems with the WCS License Application**

The Sierra Club requested a contested case on behalf of several Club members in Eunice, New Mexico, which is located five miles from the WCS site. In that request the Sierra Club noted several problems with the license application. Among those problems were the following:

- the failure of WCS to adequately characterize the underground geology and hydrology of the site - a claim supported by staff geologists at TCEQ;
- the failure of WCS to model for severe weather events, including high winds;
- the failure of WCS to consider the potential for radioactive traffic

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accidents;

- the failure of WCS to look at surface water run-off; and
- the failure of WCS to perform the required one-year pre-operation monitoring at the facility.

Pat Bobeck, a former TCEQ staff geologist who retired from the agency due to objections to the pending WCS licensing, attests that after years of application review and WCS efforts to improve the application, the applicant failed to adequately characterize the disposal site.

**“The application contained inconsistencies and contradictions and a lack of detailed geologic data,” Bobeck noted. “There is water in that clay and in the siltstone and water is going to move that waste around. It’s going to cause problems and there’s no way around that.”**

**Keeping the Public in the Dark**

“The Office of Public Counsel and TCEQ Commissioner Larry Soward agreed with us that we deserve the opportunity to show before an Administrative Law Judge that the site is not adequate to dispose of these cold-war era uranium wastes and other materials,” said Cyrus Reed, Conservation Director for the Lone Star Chapter of the Sierra Club. “If this decision stands, the public may never know why former members of the TCEQ science team looking at the application considered it one of the worst

in the agency’s history.

Sierra Club member and small business owner Rose Gardner traveled from her home in Eunice, New Mexico to attend the TCEQ meeting at which the WCS decision was made. “This stinks that the TCEQ has denied my right to a hearing about something so close to where my family lives and has been living for the past half a century. We should be able to contest that!” said Gardner. “I don’t believe this is a safe site. I think that the radioactive waste would filter down through the cracks and salt domes in that clay. It’ll leach right down into our precious groundwater. I am concerned about what this could mean for the health and well being of my family.”

**What’s Next?**

With the TCEQ set to complete a technical review of the second proposed license for low-level radioactive waste this summer, Reed said that the residents of Texas and New Mexico would be best served by getting all the issues before an Administrative Law Judge that can act outside the “political process at the agency.” “If it is really as safe as WCS claims, let’s let a Judge see all the evidence,” concluded Reed.

The Sierra Club is considering filing suit in state district court to reverse the TCEQ decision and to affirm the right of citizens to a contested case proceeding on the WCS license. More details on this prospect will be provided at a later time.

# Texas Public Utility Commission Holds Hearings on Arkansas Coal Plant

## Industrial Consumers and Environmentalists Oppose the Plant

The Public Utility Commission in Texas began hearings this week on American Electric Power/SWEPCO's controversial plan to build and operate a 600-MW coal-plant in southwest Arkansas and have both wholesale and retail consumers in Texas help pay for it – even if they never use the power directly.

The fight pits the Texas Industrial Energy Consumers – or TIEC – supported by the Texas Oil and Gas Association, the Texas Chemical Council, and the Texas Association of Manufacturers against local mayors, the East Texas Electric Cooperative, Texas legislators such as Senator Kevin Eltife and Representative Chuck Hopson, and Southwest Electric Power Company (SWEPCO).

SWEPCO operates plants throughout the United States and serves regulated electrical areas of northeast Texas and the Texas Panhandle, among other areas.

Ultimately, the Public Utility Commissioners must decide whether to grant the “Certificate of Convenience and Necessity” which SWEPCO is seeking for the John W. Turk plant and which would allow it to spread the cost to Texas wholesale and retail customers.

### Environmental Opposition

Hunting clubs, environmental groups – including the Sierra Club -- and some area landowners in Arkansas have also been opposing the plant on environmental and climate change grounds, arguing that the plant would harm the local environment and that alternative power sources are preferable to coal. Despite the opposition, in November of 2007, the Arkansas Public Service Commission approved the plant. Sierra Club also continues to be an interested party in Arkansas opposing the air permit, which has yet to be granted.

“By expanding our energy choices and looking beyond coal, we can meet our energy needs while boosting the economy and fighting global warming,” Sierra Club regional spokesman Glen Hooks said. “It’s now up to the Department of Environmental Quality to do what the commission failed to -- protect the environment and public health by rejecting this coal plant.”

### Proposal for Denial and Supplemental Hearings

In Texas, Administrative Law Judge Wendy Harvel wrote in January that “SWEPCO failed

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to prove that there is a need for the plant” – in large part because SWEPSCO lumped wholesale and retail demand together – and therefore the company’s application for a certificate of convenience and necessity should be denied, a position supported by PUC staff.

PUC Commissioners have yet to act on the Administrative Judge’s recommendation and instead ordered this week’s supplemental hearings to explore the complicated issues and ask questions related to everything from the impact of carbon dioxide regulation on price to how costs would be shared between Arkansas, Louisiana – which has already approved the cost-sharing plan – and Texas, among others.

At a recent Open Meeting of the Public Utility Commission, Chairman Barry Smitherman questioned SWEPSCO about how expected regulation on carbon dioxide emissions might impact the cost of building and operating the plant. When told it would increase the cost, he asked whether all customers would then have to pay for the decision to build a coal plant just before regulations were put in place. The SWEPSCO representative answered in the affirmative.

**SWEPSCO Rates**

SWEPSCO rates have been among the lowest in Texas, and the company argues that the building of the \$1.6 billion plant would increase rates only slightly – about 17 percent

– while ensuring adequate power for years to the region. The industrial customers, on the other hand, argue there is no need for the plant, and the total costs are likely to be much higher than the current estimate of \$1.6 billion. The industries also contend that if the wholesale customers need additional power they can contract directly with SWEPSCO and do not need to have their agreement subsidized by retail customers. They point to figures that show average rates increasing by 33 percent.

Writing in a letter to PUC Chairman Barry Smitherman earlier this year, representatives of the Texas Chemical Council, Texas Oil and Gas Association, Texas Association of Manufacturers and the Texas Independent Producers and Royalty Owners Association wrote “As the Administrative Law Judge found in her proposal for decision, the proposed Turk plant is simply not needed to serve Texas retail customers and would cause a massive rate increase to SWEPSCO’s retail customers in Texas. SWEPSCO’s own calculations show that the Turk Plant will cause a 33% increase in SWEPSCO’s retail base rates.”

**Coal Plant Costs Increasing**

According to a recent report by the Cambridge Energy Research Associates, the cost of new power plant construction in North America has risen 130 percent in the last eight years. A majority of this cost increase has occurred since 2005, with the so-called PCCI

## South Texas Groups Sue Department of Homeland Security to Restore Environmental Laws along the Border

The Frontera Audubon Society, the Friends of the Wildlife Corridor, and the Friends of Laguna Atascosa National Wildlife Refuge are suing Homeland Security Secretary Michael Chertoff for waiving 36 federal laws in order to build walls along the U.S.-Mexico border.

The South Texas organizations have joined a lawsuit that challenges the constitutionality of section 102 of the Real ID Act, which gives Secretary Chertoff the power to waive any and all federal, state and local laws in order to facilitate construction of the border wall.

The suit claims that by placing the authority to unilaterally suspend all laws in the hands of a single Administration appointee, the Real ID Act violates the Constitution's separation of powers. As organizations dedicated to the preservation of South Texas' remaining wildlife habitat, these groups assert that if environmental laws are waived, years of effort to protect species and restore critical habitat will be lost.

### Background

In April DHS Secretary Chertoff announced that he was using his waiver power to ignore 36 federal laws, including the Endangered Species Act, the Migratory Bird Treaty Act, the National Wildlife Refuge System Administration Act,

and the National Environmental Policy Act, in order to speed up construction of over 300 miles of border wall.

The only reason for Secretary Chertoff to waive these laws is that he knows that the border wall will violate them.

The fate of the Lower Rio Grande Valley National Wildlife Refuge system is of particular concern. Consisting of individual tracts of native habitat linked by the Rio Grande, it creates a wildlife corridor, providing endangered species such as the ocelot and jaguarundi sufficient territory to find food, water, and mates. Migratory birds also rely on it to rest and refuel on their annual journeys, as well as for nesting. Maps released by DHS show the border wall slicing through many refuge tracts, and cutting off others from the river.

"It's taken 30 years, \$80 million, and back-breaking effort to create an 80,000 acre wildlife corridor along the last 250 miles of the Rio Grande. To put a fence or wall through that is insanity," said Keith Hackland, President of the Friends of the Wildlife Corridor.

"Currently, there are only 80 to 100 wild ocelots remaining in the continental U.S., and they cannot hope to survive without the wildlife

## Coastal Forums a Big Success

The Lone Star Chapter of the Sierra Club, in cooperation with other organizations, held two well-attended coastal public forums last week in Bay City and Victoria.

The forums were activities of the Texas Living Waters Project, a joint effort of National Wildlife Federation, Environmental Defense and Sierra Club.

The forums focused on the new process established by SB 3, enacted by the Texas Legislature in 2007, for determining environmental flow standards (instream flow and freshwater inflow requirements) for coastal bays and estuaries and their associated river basins.

The Bay City forum, co-hosted by The Nature Conservancy, highlighted the process for Matagorda Bay and the Colorado River Basin. The Victoria forum dealt with San

Antonio Bay and the Guadalupe River Basin.

At the forum National Wildlife Federation attorney Myron Hess and scientist Norman Johns explained the importance of environmental flows, the concerns about maintaining adequate flows for a healthy ecosystem and the economy, and the specifics of the new SB 3 process.

Additional information was provided by an invited panel of resource staff from Texas Parks & Wildlife Department (Dan Opdyke), Texas Water Development Board (Barney Austin), and Texas Commission on Environmental Quality (Chris Loft and Cory Horan). The panel was moderated by the Sierra Club's Ken Kramer.

The evening forums were well-attended, with about 78 very engaged people at each. A number of elected officials, including Victoria Mayor Will Armstrong, were at the forum in Victoria. Sierra Club staffers Jennifer Walker and Tyson Broad handled the logistics for the forums.

The Sierra Club appreciates the organizations whose grants to the Texas Living Waters Project make this public outreach possible.



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corridor and the protection of the Endangered Species Act,” said Shane Wilson, President of the Friends of Laguna Atascosa. “The border wall, as proposed, will ensure that future generations will never witness the spectacular beauty of seeing an ocelot in the wild.”

**Basis of the Suit**

In their suit, the organizations ask the court to declare section 102 of the Real ID Act unconstitutional and to prevent the Department of Homeland Security from building walls, roads, or other infrastructure on the border that do not fully comply with all of our nation’s environmental laws.

**“To instantly dissolve 96 years of environmental laws and protection with a mere wave of the hand is nothing short of monstrous,”** said Jim Chapman, Board President of the Frontera Audubon Society. “If laws can be so easily swept aside on the border, the same precedent could be applied anywhere, from the Arctic National Wildlife Refuge to Yellowstone National Park. **If our nation’s laws are optional, they aren’t really laws.**”

**Broad Range of Litigants**

The Frontera Audubon Society, the Friends of the Wildlife Corridor, and the Friends of Laguna Atascosa National Wildlife Refuge are joined in this effort by a diverse group of plaintiffs along the Texas-Mexico border:

El Paso County, the El Paso County Water Improvement District No. 1, the Hudspeth County Conservation and Reclamation District No. 1, the Ysleta Del Sur Pueblo of the Tigua Nation, and Brownsville’s Galeria 409 owner Mark Clark. The law firm of Mayer Brown LLP will be representing them.

This new lawsuit follows a March request by the Sierra Club and Defenders of Wildlife for the United States Supreme Court to decide on the constitutionality of Secretary Chertoff’s waiver authority.



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**Coal Plant**, *continued from page 4*

(Power Capital Cost index) rising 69 percent since then. The IHS CERA PCCI now registers 231 index points, indicating a power plant that cost \$1 billion in 2000 would, on average, cost \$2.31 billion today.

Even if the PUC Commissioners deny the CCN application, SWEPCO could still build the plant if they get the go-ahead from Arkansas regulators.

The company could not raise its electric rates in Texas to pay for it, however. That would make building the plant a much riskier financial proposition.





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